A **LEMBAGA PELABUHAN KELANG**

v.

MEGA-WAN CORPORATE SERVICES SDN BHD

B COURT OF APPEAL, PUTRAJAYA
SURIYADI HALIM OMAR JCA
JEFFREY TAN JCA
ABDUL WAHAB PATAIL JCA
[CIVIL APPEAL NO: W-01(IM)-446-2010]
C 4 JANUARY 2012

CIVIL PROCEDURE: *Pleadings - Further and better particulars - Application for - Statement of defence - Whether matters requested were not particulars but evidence - Rationale of - Whether particulars requested* D *was to verify defendant's assertions - Whether particulars sought was relevant - Rules of the High Court 1980, O. 18 r. 12(3)*

This was the appellant's ('defendant') appeal against the decision of the High Court which allowed the respondent's ('plaintiff') E application under O. 18 r. 12(3) of the Rules of the High Court 1980 ('RHC') for further and better particulars in respect of some of the paragraphs in the statement of defence. In the said statement of defence, the defendant stated, *inter alia*, (i) that all matters pertaining to the PKFZ Project were attended by them; F and (ii) that they denied the alleged services were provided by the plaintiff. The defendant submitted that the plaintiff was not entitled to the further and better particulars as the matters requested for were not particulars but evidence which was to be adduced only at the trial. The learned Judicial Commissioner ('JC') ruled in favour of the plaintiff's application and hence, this appeal. G

Held (dismissing appeal with costs)
Per Abdul Wahab Patail JCA (majority):

(1) Order 18 r. 12(3) RHC provides that the court may order a H party to serve particulars of any pleadings on such terms as it thinks just. The exclusion of evidence from the pleadings is to keep the pleadings concise and succinct as to the cause of action and the facts relied upon. As the court having conduct of the case, the trial court views the pleadings from I the perspective of what is needed in order to enable it not only to understand the case but also make a fair and just decision. (paras 7 & 9)

(2) The basic rule of thumb is to allow further and better particulars so that a party cannot complain it has not been given adequate opportunity to check, verify and answer the facts alleged against it. The court must examine whether what is being labelled in objection as evidence is actually evidence or are particulars of fact. The distinction is that evidence is what proves a fact and particulars of facts are the primary facts that are relied upon to prove, by inference or conclusion, a disputed fact. (paras 15 & 20)

(3) The defendant could not avoid giving further and better particulars to the plaintiff as to who provided the expertise for the management and operation of the PKFZ Project simply by stating that they themselves handled the matters that arose with their own personnel and that these were internal matters of the defendant. The plaintiff must be given particulars so as to verify and satisfy themselves if possible that what is generally asserted by the defendant stands scrutiny. If denied, the defendant could spring assertions and evidence by surprise at trial to which the plaintiff would have no opportunity to answer and the course of justice may well be perverted. (paras 22 & 25)

(3a) The burden was on the defendant to reveal the names of its personnel who had the expertise to deal with the issue that arose and the management and operation of the PKFZ Project since these facts were within their own knowledge. It becomes necessary to know who from the defendant represented them, when and how, so that the plaintiff had the opportunity to check and verify the truth or validity of the assertion instead of having the evidence sprung upon it at trial. (paras 22 & 26)

(4) There was no error of principle by the JC in the exercise of his discretion as a trial judge who was seeking to ensure a fair and just decision at the end of the case. The particulars sought were relevant and the other party must be granted the right to have the particulars, so that it has the opportunity to check and verify as to the truth and correctness thereof before being taken into consideration. (paras 28 & 29)

Per Jeffrey Tan JCA (dissenting)

(1) The further and better particulars sought was to confront, challenge and/or to test the pleadings rather than for the purpose as stated in the application. There was a blatant attempt to interrogate the defendant, pin down and disprove the defence before trial. Further, the plaintiff had sought for matters which did not arise from the pleadings. Based on the pleadings, the parties knew the issues and the refusal of the particulars sought would not put the plaintiff to any surprise. (paras 32, 34, 36-39)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan perayu ('defendan') terhadap keputusan Mahkamah Tinggi membenarkan permohonan responden ('plaintif') di bawah A. 18 k. 12(3) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') bagi butir-butir lanjut dan jelas berkenaan beberapa perenggan di dalam kenyataan pembelaan. Di dalam kenyataan pembelaan tersebut, defendan telah menyatakan, antara lain, (i) bahawa semua perkara berkaitan dengan Projek PKFZ telah dihadiri oleh mereka; dan (ii) bahawa mereka menafikan perkhidmatan telah disediakan oleh plaintif. Defendan berhujah bahawa plaintif tidak layak bagi butir-butir lanjut dan jelas itu, memandangkan perkara-perkara yang diminta bukanlah butiran tetapi keterangan yang sepatutnya dikemukakan semasa perbicaraan. Yang arif Pesuruhjaya Kehakiman ('PK') memutuskan bagi pihak plaintif dan oleh itu, rayuan ini.

Diputuskan (menolak rayuan dengan kos)
Oleh Abdul Wahab Patail HMR (majoriti):

(1) Aturan 18 k. 12(3) KMT menyatakan bahawa mahkamah boleh memerintahkan suatu pihak menyampaikan butir-butir daripada apa-apa pliding atas terma-terma sebagaimana yang difikirkan adil. Pengecualian keterangan daripada pliding adalah untuk memastikan pliding adalah padat dan ringkas terhadap kausa tindakan dan fakta yang digunakan. Sebagai mahkamah yang mengendalikan kes, mahkamah bicara memandang pliding dari perspektif apa yang diperlukan bagi membolehkannya bukan sahaja memahami kes itu tetapi juga untuk membuat satu keputusan yang berpatutan dan adil.

(2) Peraturan asas adalah untuk membenarkan butir-butir lanjut dan jelas supaya sesuatu pihak tidak boleh mengadu ianya tidak diberi peluang mencukupi untuk mengkaji, mengesah dan menjawab fakta-fakta seperti didakwa terhadapnya. Mahkamah mesti mengkaji sama ada apa yang dibantah sebagai keterangan adalah sebenarnya keterangan atau pun butiran fakta. Perbezaannya adalah keterangan membuktikan sesuatu fakta sementara butiran fakta adalah fakta utama yang disandar untuk membuktikan, secara inferens atau pun kesimpulan, sesuatu fakta yang dipertikaikan.

(3) Defendan tidak boleh mengelak daripada memberi butir-butir lanjut dan jelas kepada plaintif berkenaan siapakah yang telah membekalkan kemahiran pengurusan dan operasi Projek PKFZ dengan menyatakan bahawa mereka sendiri telah mengendalikan perkara-perkara yang berbangkit dengan kakitangan mereka dan ini merupakan halperkara dalaman defendan. Plaintif mestilah diberi butiran untuk mengesahkan dan berpuashati jika boleh bahawa apa yang ditegaskan oleh defendan boleh diteliti. Jika tidak, defendan boleh membangkitkan penyataan dan keterangan secara mengejut semasa perbicaraan di mana plaintif tidak mempunyai peluang untuk menjawab dan perjalanan keadilan mungkin akan terjejas.

(3a) Beban adalah atas defendan untuk mengemukakan nama kakitangannya yang mempunyai kemahiran dalam mengendalikan isu yang berbangkit dan pengurusan dan operasi Projek PKFZ memandangkan fakta-fakta ini adalah dalam pengetahuan mereka sendiri. Adalah satu keperluan untuk mengetahui siapakah dari pihak defendan yang telah mewakili mereka, serta bila dan bagaimana, supaya plaintif mempunyai peluang untuk mengkaji dan mengesahkan kebenaran atau kesahan penyataan tanpa menghadapi kejutan-kejutan keterangan semasa perbicaraan.

(4) Tiada kekhilafan prinsip oleh PK dalam pelaksanaan budibicara beliau sebagai hakim bicara yang telah memastikan satu keputusan adil dan berpatutan dibuat pada akhir kes. Butiran yang diminta adalah relevan dan pihak satu lagi mesti diberi hak untuk mendapat butiran itu, supaya ianya mempunyai peluang untuk mengkaji dan mengesahkan kebenarannya sebelum diambil dalam pertimbangan.

Oleh Jeffrey Tan HMR (menentang):

(1) Butir-butir lanjut dan jelas yang dipohon adalah untuk menghadapi, mencabar dan/atau menguji pliding dan bukan dengan tujuan seperti dinyatakan dalam permohonan. Didapati bahawa terdapat percubaan jelas untuk menyoal siasat defendan, menundukkan dan mengilas pembelaan sebelum perbicaraan. Tambahan, plaintif telah memohon untuk perkara-perkara yang tidak berbangkit daripada pliding. Berdasarkan pliding, pihak-pihak mengetahui isu-isu dan keengganan mengemukakan butiran seperti dipohon tidak akan meletakkan plaintif dalam sebarang keadaan mengejutkan.

Case(s) referred to:

Dato Seri Dr Ling Liong Sik v. Krishna Kumar Sivasubramaniam [2002] 2 CLJ 642 HC ***(refd)***

Dato V Kanalingam v. Tommy Thomas & Anor & Other Cases [1998] 3 CLJ (Supp) 429 HC ***(refd)***

Johnson Pacific Pte Ltd v. Hogberg Fred Rickard Robin William and Others [2004] SGHC 163 ***(refd)***

Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals [1998] 3 CLJ 432 CA ***(refd)***

Tan Hoe Kock & Anor v. Ali Akarbara Mangudin & Ors [1997] 1 CLJ 348 HC ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 18 rr. 7, 10, 11, 12(3)

For the appellant/defendant - Deborah J Kaur (Cindy Khaw with her); M/s Soraya Jabid Deborah & Co

For the respondent/plaintiff - Daya Nair; M/s Nik Saghir & Ismail

[Appeal from High Court, Kuala Lumpur; Writ of Summons No: S-21-152-2009]

Reported by Kumitha Abd Majid

JUDGMENT

Abdul Wahab Patail JCA:

Introduction

[1] The appellant/defendant Lembaga Pelabuhan Kelang ("the defendant") appealed against the decision of the High Court which allowed the application of the respondent/plaintiff Mega-Wan

Corporate Services Sdn Bhd ("the plaintiff") for further and better particulars in respect of some of the paragraphs in the statement of defence.

[2] Before us, it was submitted that the plaintiff is not entitled to the further and better particulars of the defendant's statement of defence as the matters requested for are not particulars but evidence which is to be adduced only at the trial. It was submitted that the plaintiff is attempting to shift the burden of proof on to the defendant by requesting the defendant to show evidence to disprove the plaintiff's claim, thereby reversing the basic and trite principles of proof.

Background

[3] In its statement of defence of 15 July 2009, the defendant had:

(a) pleaded that the scope and terms of appointment of the plaintiff were not set out in the alleged letter of appointment and as such the said alleged letter of appointment is of no legal effect or alternatively the said letter of appointment is void for uncertainty;

(b) denied that the alleged services were provided by the plaintiff; and

(c) stated that all the matters pertaining to the PKFZ Project were attended to by the defendant.

[4] Pursuant to O. 18 r. 12(3) of the Rules of the High Court 1980, the solicitors for the plaintiff requested, on 14 January 2010, further and better particulars in respect of paras. 3, 8, 10, 11, 13, 18, 20 and 21 of the statement of defence. The request for further and better particulars in respect of para. 3 and the first request in respect of para. 10 were subsequently withdrawn.

[5] The solicitors for the defendant replied by a letter dated 28 January 2010.

[6] Not satisfied with the response from the defendant, the plaintiff filed the application under O. 18 r. 12(3) by way of a summons in chambers on 11 March 2010.

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The Law

[7] Order 18 r. 12(3) provides that the court may order a party to serve particulars of any pleadings on such terms as it thinks just. In *Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals* [1998] 3 CLJ 432, it was held that "A litigant is entitled to have particulars of facts relevant to the issues arising in order to prevent surprise but he is not entitled to have his opponent's evidence."

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[8] The distinction between facts, particular of facts, evidence and nature of evidence bears some scrutiny.

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[9] The exclusion of evidence from the pleadings is to keep the pleadings concise and succinct as to the cause of action and the facts relied upon. However, not all facts are direct facts. Some facts are conclusions or inferences of a fact drawn from other facts. In such a case, particulars of the facts relied upon therefore are required to be provided. If particulars are not provided, the trial court has the discretion under O. 18 r. 12(3) to order a party to serve further and better particulars of any pleadings on such terms as it thinks just. As the court having conduct of the case, the trial court views the pleadings from the perspective of what is needed in order to enable it not only to be able to understand the case, but also to make a fair and just decision.

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[10] Making a fair and just decision is not simply a ritual of pleadings, case management and trial, where facts and evidence, oral and documentary are produced at trial and submissions heard before the court delivers its decision. If conducted in such manner, the other party can be taken by surprise in having to face facts and evidence it had no opportunity to check and verify as to whether they are true and correctly stated. In such case, the decision of the court would be based on facts and evidence that are inherently unsafe to rely upon, hence likely unreliable.

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[11] A just decision is nothing less than a decision that is made on the basis of a correct application of law to facts that are true and correctly stated. The trial court must satisfy itself that the facts it relies upon are true and correctly stated, and reject from its consideration those that are unsafe to rely upon.

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[12] The genius of civil procedure is that the pleadings crystallise the cause of action and the facts relied upon, and likewise the defence. The pleadings binds the parties. The trial court may however allow the pleadings to be amended at any time. The reason is to ensure that relevant and material facts not known or

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available at the time the pleadings were filed can be taken into consideration in order to achieve the highest humanly possible level of a fair and just decision.

[13] So as to maintain the highest clarity of the cause of action relied upon and facts pleaded in support thereof, O. 18 r. 7 that subject to it and rr. 10, 11 and 12, every pleading must contain, and contain only a statement in a summary form of the material facts on which the party pleading relies for its claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

[14] When pleadings are closed, parties ought to immediately put the statement of claim and the statement of defence side by side and determine firstly what fact is not disputed and therefore safe to rely upon. Secondly, identify what facts are disputed, and consider, in the light of the facts that are not disputed, what disputed facts may be abandoned if unnecessary to the remedy being sought.

[15] The basic rule of thumb is to allow further and better particulars so that a party cannot complain it has not been given adequate opportunity to check, verify and answer the facts alleged against it. A denial of further and better particulars desired by a party to enable it to check, verify and answer the facts alleged against it is as much an abuse as a demand for further and better particulars that is frivolous, vexations or an abuse of the process of the court. In *Tan Hoe Kock & Anor v. Ali Akarbara Mangudin & Ors* [1997] 1 CLJ 348, it was held:

> ... instances when a defendant requests for particulars purely as a matter of harassment of the plaintiff or as a fishing expedition. Particulars ought not to be given in every case as of right. It is a discretionary right vested with the Court to be exercised upon a study of the pleadings and the averments in the affidavit in support of the application for particulars.

[16] It was submitted for the defendant that the further and better particulars sought are evidence that the plaintiff is not entitled to, and will be produced at trial. That a party is not entitled to the evidence has been stated in *Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals (ibid)*; *Dato V Kanalingam v. Tommy Thomas & Anor & Other Cases* [1998] 3 CLJ Supp 429; *Dato Seri Dr Ling Liong Sik v. Krishna Kumar Sivasubramaniam* [2002] 2 CLJ 642. It is based upon the O. 18 r. 7 that facts not evidence are to be pleaded.

[17] Order 18 r. 7 however governs pleadings. The pleadings stage ends when pleadings are closed. To enable a party to plead in answer to a fact asserted by the other party, that party must know what that fact is. Hence, facts must be pleaded unequivocally and clearly. If the pleaded fact is one that is an inference or conclusion from other facts, those other facts must be disclosed as particulars of facts. If not pleaded, the other party may require further and better particulars to enable that party to plead in answer. If such request is refused, that party may plead in answer that it is for that reason of lack of further and better particulars it cannot answer that asserted fact, or make an application to the court to order further and better particulars. The balance is, therefore, in favour of providing further and better particulars of facts.

[18] In this case, the objection is made on the basis that what is sought is evidence. In as much as there is a distinction between fact and particulars of fact, there is a distinction between evidence and nature of the evidence. It arises in this manner. The interest of justice to enable a court to deliver a decision based upon facts that are true and correctly stated necessitates that in respect of disputed facts identified and being pursued, the other party is given opportunity to check and verify the oral and documentary evidence relied upon as to authenticity. It determines whether that evidence is safe to rely upon or not. If this is denied to it, it has scant opportunity to challenge whatever the other party's witness says or deal effectively with the other party's evidence.

[19] Disclosure of the nature of the evidence relied upon in respect of disputed facts being pursued commences after the close of pleadings. The processes of discovery and interrogatories in the Rules of the High Court 1980, clearly dismisses any suggestion that evidence is only to be disclosed at trial. That evidence should not be pleaded in the pleadings does not mean that evidence can only be produced at trial. The processes of discovery and interrogatories are made available by the rules of court so that counsel can check with his client, on the basis of the nature of the evidence disclosed and relied upon by the other party, and determine whether to pursue or to abandon that dispute fact. The effect is to minimise cost as well as trial time, and promote opportunity for settlement. After all, the object of civil litigation is a fair and just resolution of a dispute between the parties, not the trial, which if absolutely necessary, should be brief and to the point.

[20] We recognise that there is the temptation to use the argument that what is sought is evidence in order to avoid providing further and better particulars. In such event, the court must examine whether what is being labelled in objection as evidence is actually evidence or in fact are particulars of fact. The distinction is that evidence is what proves a fact, and particulars of facts are the primary facts that are relied upon to prove, by inference or conclusion, a disputed fact. A simple example is that the various acts of dishonesty are primary facts which together may lead to the inference or conclusion of fact that a fraud had been committed.

[21] The role of a civil trial is to place before the trial judge in respect of facts which after discovery or interrogatory remains disputed, those evidence, oral or documentary, that need to be tested before the court so as to decide whether the evidence relied upon is safe to rely on and if so the weight to be given to it. For that purpose, the evidence relied upon must be produced. But such formal production is not necessary in respect of facts or evidence, the authenticity of which are not disputed.

[22] The learned Judicial Commissioner did not err in his appreciation of the law relating to further and better particulars. At the hearing, the plaintiff had withdrawn the request for further and better particulars for request 1 for para. 3 and request 3a. for para. 10 of the statement of defence. He then dealt with each of paras. 10, 11, 13, 18, 20 and 21. He kept in mind that sometimes a request for further and better particulars can be a strategy to harass and oppress the other side but found it not to be the case. See *Tan Hoe Keck & Anor v. Ali Akarbara Mangudin* [1997] 1 CLJ 348; *Johnson Pacific Pte Ltd v. Hogberg Fred Rickard Robin William and others* [2004] SGHC 163. We do not need to repeat or reproduce the evaluation by the learned Judicial Commissioner in detail. With regard to the request "please explain what/and or who provided the expertise to the defendant to handle the management and/or operations of the PKFZ Project and when such services were provided", the learned Judicial Commissioner quite properly pointed out the defendant's previous request for details of the alleged extensive and multi-faceted role played by the plaintiff, the dates and manner in which the alleged role was played by the plaintiff, the name of the person and designation who requested for the alleged involvement of the plaintiff in this matter and the manner in which such request was made. Like the learned Judicial Commissioner, we fail to see how and when the defendant made such a request the matter is not

A evidence but when a similar request is made by the plaintiff the request should be denied because what is requested falls with the domain of evidence. We agree that the defendant cannot avoid giving further and better particulars to the plaintiff as to who provided the expertise for the management and operation of the
B PKFZ Project simply by stating that they themselves handled the matters that arose with their own personnel and that these are internal matters of the defendant. The plaintiff must be given particulars so as to verify and satisfy themselves if possible that what is generally asserted by the defendant stands scrutiny. The
C burden is on the defendant to reveal the names of its personnel who had their expertise to deal with the issue that arose and the management and operation of the PKFZ Project. These facts are within their own knowledge and as the learned Judicial Commissioner put it, if the defendant is desirous of the trial court
D to believe in it, they should proceed to reveal those names.

[23] A similar point applies to the request for further and better particulars in respect of para. 11 of the statement of defence.

E **[24]** In para. 13 of the statement of defence, the defendant had denied paras. 5.11, 5.12, 5.13 and 5.14 of the statement of claim and the defendant puts the plaintiff to strict proof thereof. It was asserted that the defendant and its personnel were able to and did resolve matters amicably with JAFZI. The plaintiff requested for
F who, where and how the defendant's personnel who were involved resolved matters with JAFZI, and to state the issues that were deliberated upon and resolved by the defendant particularly pertaining to the management agreement with JAFZI. We do not see how this is a fishing exercise by the plaintiff for information and evidence for the plaintiff to try to build a case out of the
G defendant's information as the plaintiff's contentions are in fact baseless. It is to our minds a request to check and verify if what was asserted by the defendant is true and correctly stated. Likewise, the defendant had earlier on sought and obtained an order that the plaintiff furnish the defendant with sufficient
H particularity the details of the alleged involvement of the plaintiff in the handling of JAFZI. We do not see any basis for a distinction to favour one party or the other.

[25] Likewise, the plaintiff's request in respect of para. 18 of the
I statement of defence, for details of who in the Ministry of Finance that the defendant met with and/or liaised with and when were these meetings held and where and who were the personnel of the defendant who carried out the appeal to the Ministry of Finance

and when and how. We might have agreed with the defendant if the defendant had simply denied para. 9 of the statement of claim and the defendant puts the plaintiff to strict proof thereof. But the defendant added "the defendant was well able to liaise with the Ministry of Finance, being a statutory body itself and thus the defendant did not require the plaintiff's assistance with the same. Further or alternatively, the plaintiff's assistance, if any, was unnecessary." The further and better particulars sought are necessary to give the plaintiff an opportunity to check and verify if those statements stand scrutiny. If denied, the defendant could spring assertions and evidence by surprise at trial to which the plaintiff would have no opportunity to answer, and the course of justice may well be perverted.

[26] Similarly, at para. 20 of the statement of defence, the defendant stated that it does not admit paras. 9.5 to 9.7 of the statement of claim and the defendant puts the plaintiff to strict proof thereof. But instead of stopping there, it added "further, the defendant states that it was the defendant that had appealed to the Ministry of Finance." It became necessary to know who from the defendant represented them and when and how, so that the plaintiff has opportunity to check and verify the truth or validity of the assertion instead of having the evidence sprung upon it at trial.

[27] In para. 21 of the statement of defence, it was stated that it did not appoint the plaintiff to be involved in preparing the marketing target and operating viability PKFZ. The plaintiff sought further and better particulars with respect to who from the defendant prepared the marketing target and operation viability of the PKFZ. Obviously if there were such person or persons, the defendant would have the evidence upon which they based their assertion. Equally, obviously if the defendant could name no person, or the person named is, upon investigation, found to be incapable of preparing the marketing target and operating viability PKFZ, then the defendant's statement would not stand scrutiny.

[28] We need not go further. In short, we find no error of principle by the learned Judicial Commissioner in the exercise of his discretion as trial judge seeking to ensure a fair and just decision at the end of the case.

[29] We observe that the reason made by the appellant for refusal to provide the "further and better particulars" sought by the plaintiff was that it was evidence and would be produced at trial. It is an acknowledgement that the particulars sought were

relevant. Being relevant, the other party must be granted the right to have the particulars, so that it has the opportunity to check and verify as to the truth and correctness thereof before being taken into consideration.

[30] Accordingly, my learned brother Suriyadi Halim Omar, JCA and I agree that the appeal be dismissed with costs.

Jeffrey Tan J:

[31] This is an appeal by the defendant against the order of the learned judge who ordered the defendant/appellant to furnish further and better particulars in respect of the below stated paragraphs of the statement of defence.

[32] The appeal was dismissed by a majority. When the majority decision was pronounced, I took the minority view that the further and better particulars sought was to confront, to challenge and or to test the pleadings, rather than for the purpose as stated in the application.

[33] In the case of paras. 3 of the defence, it was self-evident that the sought particulars went beyond the scope of para. 3 of the statement of claim and or para. 3 of the defence.

[34] In the case of para. 10 of the defence, it was again self-evident that the respondent sought what did not arise from the pleadings. In para. 5.9 of the statement of claim, the respondent pleaded that a supplementary agreement was mooted but that JAFZI refused to sign that supplementary agreement. In answer to that, the appellant pleaded in para. 10 of the defence that that mooted agreement was not executed. In that same paragraph, the appellant also put the respondent to strict proof that they (respondent) had the expertise to handle the management and operations of the Port Klang Free Trade Zone project. But what the respondent sought were the reasons for the non execution of that mooted agreement and the particulars of the persons who provided the expertise to the appellant to handle the management and operations of the Port Klang Free Trade Zone project, which were not matters that arose from the pleadings.

[35] In the case of para. 11 of the defence, the appellant denied the averment in para. 5.10 of the statement of claim. In that same paragraph, the appellant pleaded that they had the expertise to handle the matters raised by the respondent in para. 5.10 of the

statement of claim. But what were sought by the respondent were particulars of the proof that the appellant had the expertise and the personnel to handle the matters raised in para. 5.10 of the statement of claim.

[36] In the case of para. 13 of the defence, the appellant denied paras. 5.11, 5.12, 5.13, and 5.14 of the statement of claim. The appellant pleaded that they and their personnel was able to settle and did resolve all matter with JAFZI. In those paras. 5.11 to 5.14, the respondent pleaded their involvement and contribution to the works/project. But what was sought by the respondent was the name of the persons who were involved in resolving the matters with JAFZI. To me, that was a blatant attempt to interrogate the appellant on their pleading.

[37] And in the case of para. 18 of the defence, it was again a blatant attempt to interrogate the appellant. In para. 18 of the defence, the appellant denied para. 9 of the statement of claim, and averred that they were well able to liaise with the Ministry of Finance and that they did not require the respondent to do the same. But what was sought was the name of the person in the Ministry of Finance whom the appellant met and the particulars of the meetings, when and where, and the names of the personnel of the appellant who had appealed to the Ministry of Finance, which clearly showed out that an application for further and better particulars was used to pin down and disprove the defence before trial.

[38] As for para. 8 of the defence, I was of the opinion that the sought particulars should be supplied. But now, on reflection, I believe that the particulars sought of para. 8 of the defence should also be refused, for the particular sought was again in the nature of interrogation.

[39] On the pleadings, the parties knew the issues. The refusal of the particulars sought would not put the respondent to any surprise.

[40] For those reasons, I would allow this appeal.